



City Council Report

Date: January 3, 2001
To: City Council
Through: Mike Hutchinson
Paul Wenbert
From: Jack Friedline
Subject: Property Acquisition and Eminent Domain Process
Council District - Citywide

Purpose

The purpose of this report is to provide information to the City Council regarding the City's process of acquiring properties and the use of eminent domain.

Background

Eminent domain, also known as condemnation, is the City's right to appropriate private land for the public good, subject to the payment of just compensation. Most major City street improvement and redevelopment projects require the use of eminent domain to guarantee that we have possession of the land and land rights in time to meet our construction schedules.

Even though assuring project schedules is our most common use, eminent domain is also used to resolve other issues such as title problems, ownership problems and valuation disputes.

Real Estate Services typically submits five to ten Council Reports each year requesting authorization to use eminent domain.

Discussion

City projects affect approximately 600 individual properties and owners each year. The affect on those properties ranges from total purchases and the relocation of families and businesses, to minor purchases for rights-of-way and easements. Real Estate Services negotiates with each of those property owners and tenants.

The attached graph outlines the ideal process for acquiring land and land rights needed for City street, redevelopment and other capital improvement projects. Although the graph starts the

process with negotiations, our first contact with the individual property owners and tenants is usually long before the appraisal process begins. Most of our first contacts happen at public meetings, site visits, or through phone calls generated by newspaper articles. Real Estate Services and other Development Services staff are available at any time, and at any point in the project, to meet with individual property owners and tenants.

The following information relates to the main points in the process as shown on the graph.

Property Appraisals. All appraisals are contracted to third party independent appraisers. All of the appraisers used by Mesa are licensed in Arizona, and most have considerable public sector experience. A typical commercial appraisal takes 30 to 60 days to complete and costs between \$500 and \$4000 depending on the complexity.

City projects and the use of eminent domain do not affect the value of a property. Our appraisers use comparable properties that are outside of the project's influence area so as to not reflect any increase or decrease in property values that the project itself may cause.

Written Offers to Property Owners. All offers to purchase property or easements are made in writing and are based on the appraised values. The written offer includes a copy of the appraisal.

City Council authorizes Eminent Domain. Eminent Domain is the City's right to appropriate private land for the public good. It is a process that allows us to gain possession of the land and land rights necessary for the project to begin.

The first step in the use of eminent domain is for the City Council to authorize its use. Due to the length of time it takes to file and have an Immediate Possession hearing scheduled by the Superior Court, staff normally requests Council's authorization to use eminent domain three months prior to the start of construction.

City Attorney Files For Immediate Possession Hearing. After Council authorizes eminent domain, the City Attorney's office requests an Immediate Possession hearing with the Superior Court. It is at the Immediate Possession hearing that Mesa is granted possession of the land and land rights needed for the project. Although the Immediate Possession hearing grants us possession of the property, the final ownership is obtained either through further negotiations or trial. The Immediate Possession hearing also does not determine the final settlement amounts.

As part of the filing process, the City Attorney's office serves the property owners and all other interested parties a summons and a notice of the Immediate Possession hearing. Property owners and/or their attorneys usually do not attend the hearing.

City of Mesa Deposits Money To Take Possession. In every case, Mesa is required by the Superior Court to deposit an amount equal to the fair market value of property taken when possession is granted to us by the court. The fair market value is normally based on Mesa's appraised value of the property taken. The money is deposited with the courts within a few days of the hearing, and is available to the property owner for his or her use while the final settlement is being discussed. The money accrues interest if the property owner does not withdraw it.

Trial to Determine Final Settlement Amount. Rarely are any other court actions necessary after the

Immediate Possession hearing. In most cases, the final settlement amounts are determined through negotiations with Real Estate Services and/or the City Attorney's office. In the cases where a negotiated settlement cannot be reached, a trial is scheduled and a judge or jury determines the final settlement amount. The City goes to trial to determine final settlements for approximately 2 to 3 properties each year.

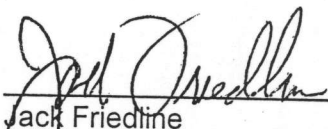
Alternatives

The only alternative normally available is to not approve the condemnation request. Staff normally does not ask for condemnation authority until all other options are exhausted.


Fiscal Impact

Using eminent domain does not add a considerable amount to a project cost. Depending on the number of parcels involved, the City Attorney's office usually files all properties in one case and attends one Immediate Possession hearing. Staff time, filing and court costs are normally estimated to be about \$5,000 to \$15,000 for each project, depending on the size of the project.


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Ideal Property Acquisition, and Relocation Process

